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An unending variety of topics

Sunday, December 18, 2005

Copyright v. the blogosphere?

"The blogosphere has developed a set of copyright norms in an area where there is very little enforcement. These norms about the use of copyrighted material are probably at odds with existing copyright law." So writes Daniel Solove, a professor at my law school, More here (via Emergent Chaos). The same was true of the original Internet itself (e-mail, ftp, and so on), and then of the web. There would be no useful Internet and no useful web if it the copyright that copyright law says exists in almost every human-generated packet of bits was actually tracked and enforced. Copyright exists by default, simply from the human act of creating a web page, a photo, some music, and so on. Generally, under current copyright law once a work is created it may not be copied without the express permission of the copyright owner. However, if this standard were actually applied to the Internet transaction costs would be prohibitive and the Internet would not usefully exist.

Fortunately, at least some of the massive copying done by the Internet has been deemed to come under "implied consent." By sending e-mail or publishing your web page, you have given implied consent for intermediating servers and users to have their software make copies so that users can view your work. Unless you put up a "robots.txt" file that forbids it, presumably Google and other search engines are free to copy, search, and cache your web pages, without asking you despite your copyright in them. Contrary to standard copyright law, web searching like many other features of the Internet does not require the express permission of the copyright owner. To be protected against copying the author must give notice that he desires such protection, rather than the starting with the presumption that nothing can be copied. This results in radically lower transaction costs that make e-mail, the web, and web searching possible. But when an industry fights back (e.g. the music industry against P2P) the presumptions made by emerging Internet norms can be put in jeopardy, Solove points out.

The idea that copyright exists by default in a work is a rather recent one, especially in the United States. Traditionally, unless one registered the work with a copyright office, or at least labeled the work as "copyright", it was presumed that the work was placed, like almost all human communication has traditionally been placed, in the public domain. Copyright offices are now online and works mostly digital, so that registration can be made far easier. It's often easy to give notice to software regarding the status of works as with the "robots.txt" system. Under Internet norms works such as e-mails, web pages, and blog posts are not protected against copying by default. Thus, this older version of copyright law, where works are not copyrighted until they are registered or at least labeled as such (this time in a computer-readable way) is what we should return to in the Internet era, legally as well as de facto.

Posted by Nick Szabo at 9:24 AM

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About Me

Nick Szabo

"A premier thinker about history, law and economics, and the lessons they have for security." -- Adam Shostack, Emergent Chaos

"Szabo comes out with these essays that leave me in awe." -- Brian Dunbar

"Reading material that is eclectic, challenging and endlessly fascinating." -- Sean McGrath, Propylon

"Like most blogs worth my attention, this blog is updated only infrequently. That is because the authors of blogs worth my attention only post when they have something to say that is true, relevant and not already known by their audience. Most of the human race does not have the skill to know when an idea has these three properties. The skill is particularly rare in the fields of politics and economics, which is why this blog is such a rare and valuable thing." -- Richard Hollerith

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1 comment:

Jeff said...

I read the fine print of Blogger, was disturbed, and moved my blog to my own domain. I have much more control over my product.

10:27 AM

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